Supreme Court, U.S.
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No. 96-411

In The

Supreme Court of the United States

October Term, 1996

SYSTEMS FUEL, INC. and GENERAL MARINE TOWING COMPANY, INC.,

Petitioners,

v.

BOBBY LEON ALEXANDER,

Respondent.

On Petition For Writ Of Certiorari To The Louisiana State Supreme Court

REPLY BRIEF

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REPLY BRIEF OF PETITIONER

CORRECTION OF MISSTATEMENTS IN RESPONDENT'S BRIEF IN OPPOSITION

Petitioners take issue with Respondent's interpretation of the Louisiana Supreme Court's opinion in which the Court stated, in its entirety: "Judgment of the Court of Appeals is reversed. Collateral estoppel does not apply in this case. Case remanded to the district court for further proceedings."

FACTUAL BACKGROUND

Respondent, in relating the factual background, conveniently forgot to include several very important factual findings and misstate others:

(1) Not only had Respondent reached maximum medical recovery on January 6, 1989, he had also fully recovered according to the testimony of his physician, Dr. Robert Cooper. See *Louisiana Fourth Circuit Court of Appeals Opinion,* Petition for Writ of Certiorari, p. 11a.

(2) Not only did Respondent return to work for 75 days over a three month period, but he also never suffered any headaches, back or neck pains until he injured himself at home in late April of 1989. See *Louisiana Fourth Circuit Court of Appeals Opinion,* Petition for Writ of Certiorari, p. 19a.

(3) The medical treatment and bills of Dr. John Smoot and Dr. John Frenz were not connected to any work-related injury, but were the result of the injury Plaintiff sustained at his home in late April of 1989. See

Louisiana Fourth Circuit Court of Appeals Opinion, Petition for Writ of Certiorari, p. 19a.

Respondent illogically argues the substantive facts which have already been proved and incorrectly states that the Louisiana Fourth Circuit Court of Appeals' opinion dated September 29, 1994, precluded his claim for pain and suffering and lost wages. While the trial court allowed Respondent to put on proof of pain and suffering, it refused his request to offer medical testimony from Dr. John Smoot and Dr. John Frenz who treated Respondent after he had fully recovered from any work-related injury.

While the trial court allowed Respondent to put on evidence of past wage loss, it ordered that he could not offer evidence after January 7, 1989, the date he returned to full employment. Further, the trial court found that Respondent had worked at full employment for over three months prior to sustaining his injury at home, one which was totally unrelated to his work-related injury. At the time that Respondent sustained his injury at home, it had been factually determined and decided that he had fully recovered and was not suffering from any disability, pain and suffering, or any other damages resulting from his work-related injury.

Petitioners contend that it is completely absurd for a court to find that Respondent had fully recovered from his work-related injury on January 6, 1989; had worked 75 days at hard manual labor as a deckhand with no complaints or physical problems; had sustained an injury to his back while at home; had sought immediate medical treatment from Dr. John Smoot and subsequent treatment

from Dr. John Frenz; that subsequent to his injury at home, all medical treatment, disability and other damages resulted from that accident at home and not from his work-related accident; and then hold that the treatment from Dr. Smoot and Dr. Frenz would be admissible to show pain and suffering from his work-related injury.

Also Petitioners claim that the same reasoning applies to allowing Respondent to offer evidence that he has sustained a wage loss arising out of his work-related injury when the proof is that he lost no wages after January 6, 1989 as a result of that work-related injury.

The Louisiana Fourth Circuit Court of Appeals' opinion which the Louisiana Supreme Court subsequently reversed noted the following operative facts:

(1) Respondent was treated for the injuries he sustained in the accident and reached maximum medical improvement on January 6, 1989.

(2) All medical bills and benefits for maintenance and cure were paid through that date.

(3) He returned to work on January 7, 1989 and worked for the next three months without problems or complaints.

(4) In April, 1989, he injured his back at home.

(5) All subsequent medical treatment, disability, and other damages resulted from this accident at home.

The above operative facts are not contested and were all necessary determinations since the Respondent put at issue his medical bills and his demand for maintenance

from January 7, 1989 through the date of the maintenance and cure trial, April 7, 1993.

In affirming the trial court's opinion, the Louisiana Fourth Circuit Court of Appeals stated in the last paragraph of its opinion that "[c]ollateral estoppel applies to admiralty proceedings. (citation omitted) Under the doctrine of collateral estoppel, this factual determination was conclusively established and cannot be re-litigated by the same parties." (citation omitted)

Petitioners contend that the argument proposed by the Respondent that he should be able to put on evidence of future lost wages is irrational and illogical when the Louisiana courts have previously determined that all of his post-January 6, 1989 medical treatment, disability, and other damages sustained by the Respondent resulted from the accident he sustained at home and not from any work-related accident.

While Petitioners concede that the Louisiana Supreme Court did not specifically state that collateral estoppel does not apply to admiralty proceedings, the only reasonable explanation or interpretation of the Louisiana Supreme Court's twenty-six-word opinion is that collateral estoppel is not recognized in admiralty proceedings filed, pursuant to the savings-to-suitors clause, in the courts of the State of Louisiana.

The sole issue for this Court's determination is whether or not the Louisiana State Supreme Court recognizes the substantive doctrine of collateral estoppel as it applies to admiralty cases. The cases cited by Respondent for the proposition that Louisiana recognizes the doctrine of collateral estoppel are ones focusing on criminal law

and are clearly distinguishable from the facts in the case at bar. *State v. Bolden,* 639 So.2d 721 (La. 1994) and *State v. Brooks,* 541 So.2d 801 (La. 1989) deal with the United States Constitution's Fifth Amendment guarantee against double jeopardy.

Also, in *State v. Miller,* 571 So.2d 603 (La. 1990) the Louisiana Supreme Court held that the doctrine of collateral estoppel was not applicable and applied Article 905.8, La.C.Cr.P. concerning imposition of sentence. Also, the Louisiana Supreme Court in *State v. Brooks, supra,* cited *State v. Knowles,* 392 So.2d 651 (La. 1981) in its discussion concerning collateral estoppel. The *Knowles* case is primarily a double jeopardy case and the common law issues of collateral estoppel did not apply.

Respondent also argues that the decision in *Milstead v. Diamond M Offshore, Inc.,* 676 So.2d 89 (La. 1996) is applicable for the propositions that Louisiana law recognizes the characteristic features of general maritime law and that decisions of the Louisiana Supreme Court do not interfere with the proper harmony and uniformity of maritime law. However, the *Milstead* decision was rendered on July 2, 1996, approximately four months after the Louisiana Supreme Court's decision rendered in the instant case. It should also be noted that *Milstead* did not address collateral estoppel issues, but spoke to the standard for appellate review.

It could be argued that the decision in the *Milstead* case overruled the decision rendered by the Louisiana Supreme Court in the case at bar. Then, the highest court of the State of Louisiana would have provided this Court with another basis to reverse summarily the Louisiana

Supreme Court and to hold that collateral estoppel does apply in the instant case and that its application precludes the Respondent from both proceeding with his wage loss claim after January 6, 1989, when he returned to full employment with no restrictions nor complaints, and putting on the medical testimony of Dr. Smoot and Frenz who treated him for injuries that he sustained at home and which were not connected in any way to his work-related accident.

A review of Louisiana Court cases still fails to uncover any Louisiana State Court decision which applied the doctrine of collateral estoppel in an admiralty proceeding.

Respondent further argues that the doctrine of res judicata does not bar his claims for future wage loss and future pain and suffering. This case has never been one involving the doctrine of res judicata, but has always addressed the doctrine of collateral estoppel.

Respondent's argument that he should be allowed to offer evidence of his medical treatment after January 6, 1989 through Drs. Smoot and Frenz on the issue of his pain and suffering at the trial of negligence and unseaworthiness points out the absurdity of his entire response to the Petition.

The Respondent erred in assuming that the Supreme Court of Louisiana's reversal on the grounds that collateral estoppel did not apply in a bifurcated Jones Act/ General Maritime Law context, was, in effect, a substantive law ruling that the trial court's order was unfounded and prejudicial. Respondent admits that "clearly, medical

testimony is both relevant and essential to a showing of pain and suffering." *Brief in Opposition*, pp. 17-18.

But, the real question is, "How relevant and essential to a showing of pain and suffering is evidence of medical treatment that has previously been determined to be the result of an accident totally unrelated to the one at issue?"

The scenario in the case at bar illustrates why the doctrine of collateral estoppel is followed in maritime matters. For this Court to deny this Petition and allow the Louisiana Supreme Court's decision to stand would severally damage the uniformity of the general maritime law as it is applied in cases filed in the courts of the several states pursuant to the savings-to-suitors clause of 28 U.S.C. §1331(1).

Respectfully submitted,

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